

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.76 OF 2012

ORDER:

This revision petition is filed under Section 115 C.P.C. challenging the order dated 28.11.2011 passed in E.A.No.6 of 2011 in E.P.No.11 of 2008 by the Senior Civil Judge, Zaheerabad ordering arrest and detention of the petitioner/Judgment Debtor in civil prison for a period of three months subject to payment of subsistence allowance.

The respondent/decreed holder obtained a decree for recovery of amount and filed E.P. under Order XXI Rules 37 and 38 C.P.C. to arrest the petitioner and detain in civil prison for realization of the decree amount. The respondent/JDr filed counter contending that he has no independent source of income to discharge the debt muchless sufficient income to discharge the debt and therefore, the arrest cannot be ordered and also contended that the property is under mortgage with the bank and that he has no other property and prayed for dismissal of the petition.

According to Order XXI Rule 40 C.P.C., (1) when a judgment debtor appears before the Court in obedience to a notice issued under Rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the court shall proceed to hear the decree holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment debtor an opportunity of showing cause why he should not be committed to the civil prison. (2) pending the conclusion of the inquiry under Sub-rule (1) the court may, in its discretion, order the judgment debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required. (3) upon the conclusion of the inquiry under Sub-rule 1 the court

may, subject to the provisions of Section 51 and to the other provisions of this Code, make an order for the detention of the judgment debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest.

Therefore, it is clear from Order XXI Rule 40 an enquiry to be conducted on appearance of the Judgment Debtor giving opportunity to both parties to produce evidence in support of their contentions. But instead of following such procedure based on the execution petition and counter filed by the Judgment Debtor passed the impugned order, which is contrary to Order XXI Rule 40 C.P.C. Therefore, the impugned order is liable to be set aside and remanded to the Court below.

In the result, the civil revision petition is allowed setting aside the order dated 28.11.2011 passed in E.A.No.6 of 2011 in E.P.No.11 of 2008 by the Senior Civil Judge, Zaheerabad and remanded to Senior Civil Judge, Zaheerabad to decide in accordance with. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

14.03.2018
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